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12
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14
15 IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
16 FRESNO DIVISION

17 UNITED STATES OF AMERICA,)

18 Plaintiff,)

19 v.)

20 SAINT-GOBAIN CONTAINERS, INC.,)

21 Defendant.)
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Civil No.

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

1 (“PM₁₀”).

2 7. Defendant is a “person” as defined in Section 302(e) of the Act, 42 U.S.C.
3 § 7602(e).

4 STATUTORY AND REGULATORY BACKGROUND

5 8. The Clean Air Act was enacted to protect and enhance the quality of the Nation’s
6 air resources so as to promote the public health and welfare and the productive capacity of the
7 population.

8 National Ambient Air Quality Standards and Attainment Areas

9 9. On April 30, 1971, in accordance with Section 109 of the Act, 42 U.S.C. § 7409,
10 the Administrator of the EPA (“Administrator”) promulgated National Ambient Air Quality
11 Standards (“NAAQS”) for several pollutants, including ozone and NOx. These standards are
12 published at 40 C.F.R. §§ 50.9, 50.10, and 50.11. The NAAQS establish primary air quality
13 standards to protect the public health and secondary air quality standards to protect the public
14 welfare.

15 10. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to
16 designate those areas within its boundaries that are better or worse than the NAAQS for each
17 listed pollutant, or that cannot be classified due to insufficient data. The Administrator is
18 thereafter required to promulgate a list of such areas.

19 11. An area that meets the NAAQS for a particular pollutant is termed an
20 “attainment” area; one that does not is termed a “nonattainment” area. SGCI’s Facility is located
21 in Madera County, which is part of the San Joaquin Valley Area that has been designated as a
22 severe nonattainment area for ozone and cannot be classified for NOx. 40 C.F.R. § 81.305.

23 12. Ground-level ozone is formed when volatile organic compounds (“VOCs”) react
24 with NOx in the presence of sunlight. As a precursor to ozone, NOx is one of the regulated
25 pollutants relating to the ozone NAAQS. 40 C.F.R. Part 58, App. D, Section 2.5.

26 State Implementation Plan

27 13. To achieve the objectives of the NAAQS and the Act, Section 110(a) of the Act,
28 42 U.S.C. § 7410(a), requires each state to submit to the Administrator for approval a plan that

1 provides for the implementation, maintenance, and enforcement of the NAAQS in each air
2 quality control region in the state. This plan is known as a State Implementation Plan ("SIP").

3 14. The federally-approved California SIP is the "applicable implementation plan,"
4 within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b), governing the operations
5 of SGCI's Facility.

6 15. The Facility is subject to the jurisdiction of the San Joaquin Valley Unified Air
7 Pollution Control District ("SJVUAPCD" or "District").

8 Prevention of Significant Deterioration of Air Quality

9 16. Subchapter I, Part C ("Prevention of Significant Deterioration of Air Quality" or
10 "PSD") of the Act is designed to prevent the significant deterioration of air quality in attainment
11 areas and sets out requirements for SIPs for attainment areas to enforce maintenance of the
12 NAAQS. 42 U.S.C. §§ 7470-7491.

13 17. Section 165(a)(1) of the Act, 42 U.S.C. § 7475(a)(1), forbids the construction of
14 major emitting facilities unless the owner or operator of the facility has obtained, prior to
15 construction, a permit to construct that sets forth emission limitations for the facility. The term
16 "major emitting facilities" includes sources with the potential to emit two hundred and fifty tons
17 per year of any regulated pollutant. 42 U.S.C. § 7479(1). The term "construction" is defined to
18 include modifications which, among other things, increase the amount of any air pollutant
19 emitted by the facility. 42 U.S.C. §§ 7479(2)(c) and 7411(a)(4).

20 18. SGCI's Facility is a "major emitting facility" as defined in 42 U.S.C. § 7479(1).

21 19. Section 165(a)(4) of the Act, 42 U.S.C. § 7475(a)(4), requires major emitting
22 facilities to control regulated pollutants with the "best available control technology" ("BACT").

23 20. Section 110(a)(2)(c) of the Act, 42 U.S.C. § 7410(a)(2)(c), requires that each SIP
24 include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-
25 7491.

26 21. Section 161 of the Act, 42 U.S.C. § 7471, requires each SIP to contain "emissions
27 limitations and such other measures as may be necessary . . . to prevent significant deterioration
28 of air quality" in attainment and unclassifiable areas.

1 22. Pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA
2 promulgated 40 C.F.R. § 52.21, the Prevention of Significant Deterioration of Air Quality
3 regulations. 43 Fed. Reg. 26,402 (June 19, 1978). The provisions of Sections 52.21(b) through
4 (w) (the "PSD regulations") were incorporated by reference and made part of the applicable
5 California SIP at 40 C.F.R. § 52.270. 50 Fed. Reg. 25,419 (June 19, 1985), as amended at 50
6 Fed. Reg. 30,943 (July 31, 1985).

7 23. In pertinent part, the PSD regulations define a "major stationary source" as any
8 source that emits or has the potential to emit such pollutants in amounts equal to or greater than
9 250 tons per year. 40 C.F.R. § 52.21(b)(1)(i)(b).

10 24. The PSD regulations define "potential to emit" as "the maximum capacity of a
11 stationary source to emit a pollutant under its physical and operational design." 40 C.F.R.
12 § 52.21(b)(4). Physical and operational limitations on a source's capacity to emit may be
13 considered only if they meet certain criteria, such as inclusion in an enforceable permit. Id.

14 25. The PSD regulations define "major modification" as "any physical change in or
15 change in the method of operation of a major stationary source that would result in a significant
16 net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R.
17 § 52.21(b)(2)(i).

18 26. The PSD regulations define "significant net emissions increase" as an increase in
19 actual emissions equal to or above 40 tons per year of NOx. 40 C.F.R. § 52.21(b)(3)(i) and
20 (b)(23)(i).

21 27. The PSD regulations define "actual emissions" as follows: "In general, actual
22 emissions as of a particular date shall equal the average rate, in tons per year, at which the unit
23 actually emitted the pollutant during a two-year period which precedes the particular date and
24 which is representative of normal source operation." 40 C.F.R. § 52.21(b)(21)(ii). In addition,
25 "[f]or any emissions unit . . . which has not begun normal operations on the particular date, actual
26 emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(iv).

27 28. The requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply to any
28 major stationary source and any major modification with respect to each pollutant subject to

1 regulation under the Act that it would emit. 40 C.F.R. § 52.21(i)(2).

2 29. The requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply to any
3 major stationary source and major modification that would be constructed in an area designated
4 as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Act. 40 C.F.R.
5 § 52.21(i)(3).

6 30. The PSD regulations require, among other things, application of BACT, an
7 analysis of source impacts, air quality modeling and analysis, and meaningful public
8 participation. 40 C.F.R. § 52.21(j)-(r).

9 31. No stationary source or modification to which the requirements of paragraphs (j)
10 through (r) of 40 C.F.R. § 52.21 apply shall begin actual construction without a permit which
11 states that the stationary source or modification would meet those requirements. 40 C.F.R.
12 § 52.21(i)(1).

13 32. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21
14 who commences construction without applying for and receiving approval thereunder is subject
15 to appropriate enforcement action. 40 C.F.R. § 52.21(r); see also § 52.21(b)(8), (9) and (11).

16 CAA Section 182 and SJVUAPCD Rule 4354

17 33. Section 182(f) of the Act requires states to apply the same requirements to major
18 stationary sources of NO_x as are applied to major stationary sources of VOCs in moderate or
19 above ozone nonattainment areas. Because SJVUAPCD is classified as a severe ozone
20 nonattainment area, Section 182(b)(2) of the Act requires states to include provisions in their
21 SIPs that implement reasonably available control technology requirements for major stationary
22 sources of NO_x. 42 U.S.C. § 7511a(b)(2).

23 34. In accordance with Sections 110 and 182 of the Act, EPA incorporated
24 SJVUAPCD Rule 4354, "Glass Melting Furnaces," into the SJVUAPCD's portion of the
25 California SIP. Rule 4354 became federally enforceable on October 2, 2000. 40 C.F.R.
26 § 52.220(c)(199)(1)(D)(2); 65 Fed. Reg. 53,181 (September 1, 2000).

27 35. Rule 4354 applies to any glass melting furnace that is part of a major NO_x source.

28 36. Section 3.9 of Rule 4354 defines "major NO_x source" as "any major source as

1 defined in Rule 2201 (New and Modified Stationary Source Review Rule), with a potential to
2 emit 50 tons or more per year of NOx.”

3 37. The Facility is a major NOx source under Rule 4354 and the Facility’s two
4 container glass melting furnaces are subject to Rule 4354.

5 38. Section 7.0 of Rule 4354 requires owners of container glass melting furnaces to
6 demonstrate full compliance with the provisions of Rule 4354 upon the next furnace rebuild after
7 January 1, 1999.

8 39. Rule 4354, Section 3.2 defines “container glass” as “any glass manufactured by
9 pressing, blowing in molds, drawing, rolling, or casting which is used as a container.”

10 40. Rule 4354, Section 7.2.3 defines “full compliance” as “the date by which the
11 owner shall demonstrate that each furnace is in compliance after start-up with the emission limits
12 in Section 5.1 and after which, the owner shall remain in compliance with the applicable
13 emission limits in Section 5.1.”

14 41. Section 3.17 of Rule 4354 defines “start-up” as “the period of time, after initial
15 construction or a furnace rebuild, during which a glass melting furnace is heated to operating
16 temperature, and brought to stabilization.” The start-up period for container glass furnaces is
17 defined in 3.17.1 as not exceeding “90 days following initial glass pull.”

18 42. Rule 4354, Section 3.7 defines “furnace rebuild” as “a cold tank repair which is
19 commenced after the end of a furnace campaign period or expected life cycle of a furnace. For
20 the purpose of compliance deadline in Section 7.1, the effective date of a furnace rebuild is the
21 date of the start of the furnace shutdown.”

22 43. Section 5.5 of Rule 4354 states that “effective on and after the full compliance
23 date for Tier 2 emission limits, the owner of any glass melting furnace shall implement a NOx
24 CEMS [continuous emissions monitoring system] or a NOx alternate emissions monitoring
25 method on each furnace” that is approved by the District and meets the requirements of Section
26 6.6.

27 44. Section 6.6.1 of Rule 4354 requires an approved CEMS to comply with the
28 requirements of 40 C.F.R. Part 51, 40 C.F.R. §§ 60.7 and 60.13, 40 C.F.R. Part 60, Appendix B

1 (Performance Specifications) and Appendix F (Quality Assurance Procedures), and applicable
2 sections of SJVUAPCD Rule 1080 (Stack Monitoring).

3 45. Section 6.6.2 of Rule 4354 requires an approved alternate emissions monitoring
4 method to be capable of determining the furnace emissions on an hourly basis and to comply
5 with the requirements of 42 Fed. Reg. 54,900 (Compliance Assurance Monitoring) and 40 C.F.R.
6 § 60.13 (Monitoring Requirements), as applicable.

7 46. Section 5.0 of Rule 4354 prohibits the owner of any container glass melting
8 furnace to operate the furnace in excess of specified emission limits for NO_x, VOCs, and carbon
9 monoxide.

10 47. Section 6.4 of Rule 4354 requires the owner of any glass melting furnace to
11 conduct a source test on each glass melting furnace at least once every calendar year to
12 demonstrate compliance with the applicable requirements of Section 5.0.

13 CAA Title V Permitting Requirements

14 48. CAA Title V requires major stationary sources of air pollution to obtain an
15 operating permit that includes emission limitations and such other conditions as are necessary to
16 assure compliance with applicable CAA requirements. 42 U.S.C. §§ 7661a - 7661f.

17 49. On April 24, 1996, EPA granted final interim approval of the District's Title V
18 program. 61 Fed. Reg. 18,083 (April 24, 1996). Permits issued under a program with interim
19 approval have full standing with respect to 40 C.F.R. Part 70. 61 Fed. Reg. at 18,087.

20 Title V Permit for Facility

21 50. On July 15, 1998, the District issued a final Title V permit to Madera Glass
22 Company, a corporate predecessor to SGCI. The permit contains both general conditions for
23 operation of the Facility, identified as "Facilitywide Requirements," and unit-specific conditions,
24 identified as "Permit Unit Requirements," for operation of the various emissions units at the
25 Facility, including each of the Facility's two glass melting furnaces, known as Furnace #1 and
26 Furnace #2. The Title V permit also identified Furnace #1 by its permit unit number, C-801-1-1,
27 and Furnace #2 by its permit unit number, C-801-2-1.

28 51. Condition 35 of the Facilitywide Requirements requires the permittee to "submit

1 certifications of compliance with the terms and standards contained in Title V permits, including
2 emissions limits, standards and work practices, to the District and the EPA annually The
3 certification shall include the identification of each permit term or condition, the compliance
4 status, whether compliance was continuous or intermittent, the methods used for determining the
5 compliance status, and any other facts required by the District to determine the compliance status
6 of the source.”

7 52. Conditions 1, 2, and 4 of the Permit Unit Requirements for Furnace #2 and
8 Conditions 1 and 4 of the Permit Unit Requirements for Furnace #1 require the permittee to
9 comply with emissions limits for particulate matter and NOx.

10 53. Condition 12 of the Permit Unit Requirements for Furnaces #1 and 2 requires the
11 permittee to conduct source testing at least once per year to demonstrate compliance with the
12 NOx and particulate matter emission limits.

13 EPA’s Authority to Request Information under CAA Section 114

14 54. In order to determine whether a person is in violation of a SIP requirement or
15 other CAA requirement or standard, EPA is authorized, pursuant to 42 U.S.C. § 7414, to require
16 any person who owns or operates an emission source to establish and maintain records, make
17 reports, install monitoring equipment, and provide such other information as EPA may
18 reasonably require.

19 CAA Enforcement Authority

20 55. A person’s failure to comply with any approved regulatory provision of a SIP
21 renders the person in violation of an applicable implementation plan and subject to enforcement
22 under Section 113 of the Act. 40 C.F.R. § 52.23.

23 56. Under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), when the
24 Administrator finds that a person has violated a requirement of an applicable permit or SIP, he or
25 she shall notify that person, as well as the state in which the person operates, of such finding.
26 The Administrator is then authorized to commence a civil action, under Section 113(b) of the
27 Act, 42 U.S.C. § 7413(b), for violations charged in the Notice of Violation (“NOV”) at any time
28 more than thirty days from the date the NOV was issued.

57. On August 6, 1999, EPA issued NOV's to Ball-Foster Glass Container Company, LLC ("Ball-Foster"), a corporate predecessor of SGCI, for violations of the California SIP and the Act at the Facility. EPA also issued NOV's to SGCI on March 6, 2002, August 29, 2002, and January 30, 2003, for violations of the California SIP and the Act at the Facility.

58. A person's failure to comply with any requirement of a Title V permit is a violation of the Act subject to enforcement under CAA Section 113(b)(2). 42 U.S.C. §§ 7413(b)(2), 7661a(a).

59. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties not to exceed \$25,000 per day of violation for violations of the Act, including violations of a SIP and Title V. Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), civil penalties of up to \$27,500 per day per violation may be assessed for violations occurring between January 30, 1997, and March 15, 2004, and up to \$32,500 per day per violation for violations occurring after March 15, 2004.

FIRST CLAIM FOR RELIEF

(PSD Violation)

60. Paragraphs 1 through 32, 55 through 57, and 59 are incorporated herein by reference as if fully set forth below.

61. The Facility is comprised of two gas-fired regenerative furnaces, known as Furnace #1 and Furnace #2, and various production lines serving each furnace.

62. When EPA promulgated its PSD regulations in June 1978, the Facility's potential to emit NOx exceeded 250 tons per year. The Facility is an existing major stationary source.

63. On or about June 12, 1998, the Facility submitted an application for an Authority to Construct (“ATC”) permit to the SJVUAPCD to modify Furnace #2.

64. On or about August 27, 1998, SJVUAPCD issued an ATC to the Facility to modify Furnace #2 by increasing electric boosting capacity, enlarging the melting area, and adding two natural gas firing ports.

65. The Facility commenced modification of Furnace #2 on or about December 23,

1 1998, completed the modification on or about February 7, 1999, and restarted production at
2 Furnace #2 on or about February 13, 1999.

3 66. Prior to these modifications, actual emissions of NOx from Furnace #2 were
4 approximately 230 tons per year.

5 67. After these modifications, Furnace #2's potential to emit NOx is approximately
6 442 tons per year.

7 68. The modifications at the Facility resulted in a significant net emissions increase of
8 NOx that exceeds 40 tons per year.

9 69. The Facility did not comply with PSD requirements for the modifications because
10 it failed to apply for or obtain a PSD permit before commencing construction, did not apply
11 BACT, did not analyze source impacts, failed to conduct air quality modeling and analysis, or
12 otherwise comply with 40 C.F.R. §52.21 (j) - (r).

13 70. In operating the Facility without complying with PSD requirements, SGCI
14 violated the SJVUAPCD portion of the California SIP and the CAA.

15 71. Unless restrained by an order of the Court, SGCI will continue to violate the
16 SJVUAPCD portion of the California SIP and the CAA. Pursuant to Section 113(b) of the CAA,
17 42 U.S.C. § 7413(b), the United States is entitled to injunctive relief against SGCI for its
18 continuing violations of the SJVUAPCD portion of the California SIP and the CAA.

19 72. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt
20 Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table),
21 SGCI is liable for civil penalties of up to \$27,500 per day for each violation of any requirement
22 of the CAA occurring between January 30, 1997, and March 15, 2004, and is liable for civil
23 penalties of up to \$32,500 per day for each violation of any requirement of the CAA occurring
24 after March 15, 2004.

25 **SECOND CLAIM FOR RELIEF**

26 **(Rule 4354 - Failure to Install and Operate CEMS)**

27 73. Paragraphs 1 through 15, 33 through 47, 55 through 57, and 59 are incorporated
28 herein by reference as if fully set forth below.

1 74. On or about December 23, 1999, the Facility began rebuilding Furnace #1.

2 75. Pursuant to Section 5.5 of SJVUAPCD Rule 4354, the December 1999 rebuild of
3 Furnace #1 required the Facility to implement a NOx CEMS or have an approved NOx alternate
4 emissions monitoring method.

5 76. The Facility restarted production of container glass at Furnace #1 on or about
6 February 16, 2000.

7 77. Pursuant to Section 3.17 of Rule 4354, the start-up period for Furnace #1
8 concluded no later than May 16, 2000. At the conclusion of the start-up period, the Facility had
9 not installed an approved CEMS at Furnace #1 and did not have an approved alternate
10 monitoring method as required by Rule 4354.

11 78. On or about September 14, 2000, SJVUAPCD issued NOV #12223 because the
12 Facility failed to have an approved alternate monitoring method in place at the conclusion of the
13 start-up period.

14 79. EPA conducted a site visit at the Facility on December 4, 2001, and determined
15 that the Facility had no CEMS or approved alternate monitoring method at Furnace #1.

16 80. EPA issued an NOV to SGCI on March 5, 2002, finding that the Facility failed to
17 have a CEMS or approved alternate monitoring method at Furnace #1.

18 81. On or about November 6, 2002, SGCI sent a letter to EPA, indicating that the
19 CEMS for Furnace #1 had been tested on October 18, 2002, and that preliminary results
20 indicated all parameters were within acceptable levels of accuracy.

21 82. On every day that the Facility operated Furnace #1 without a CEMS or approved
22 alternate monitoring method from October 2, 2000, to October 18, 2002, SGCI violated Rule
23 4354 as incorporated into the District's portion of the California SIP and the CAA.

24 83. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt
25 Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table),
26 SGCI is liable for civil penalties of up to \$27,500 per day for each violation of any requirement
27 of the CAA occurring between January 30, 1997, and March 15, 2004.

28

1 **THIRD CLAIM FOR RELIEF**

2 **(Rule 4354 - Failure to Conduct Source Test for Furnace #2)**

3 84. Paragraphs 1 through 15 and 33 through 59 are incorporated herein by reference
4 as if fully set forth below.

5 85. On May 23, 2002, EPA requested SGCI, pursuant to 42 U.S.C. § 7414, to provide
6 a copy of all source tests conducted at the Facility on Furnace #2 in 2000.

7 86. The Facility responded on June 5, 2002, stating that there were no source tests
8 conducted on Furnace #2 in the year 2000.

9 87. The Facility violated Rule 4354 as incorporated into the District's portion of the
10 California SIP and the CAA by failing to conduct a source test on Furnace #2 during calendar
11 year 2000.

12 88. The Facility violated Condition 12 of the Permit Unit Requirements for Furnace
13 #2 in its Title V permit and Section 502 of the Act by failing to conduct a source test on Furnace
14 #2 during calendar year 2000.

15 89. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt
16 Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table),
17 SGCI is liable for civil penalties of up to \$27,500 per day for each violation of any requirement
18 of the CAA occurring between January 30, 1997, and March 15, 2004.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Rule 4354 - Failure to Conduct Source Test for Furnace #1)**

21 90. Paragraphs 1 through 15 and 33 through 59 are incorporated herein by reference
22 as if fully set forth below.

23 91. In a letter dated November 22, 2002, SGCI informed EPA that it had failed to
24 conduct a source test on Furnace #1 at the Facility during calendar year 2001.

25 92. The Facility violated Rule 4354 as incorporated into the District's portion of the
26 California SIP and the CAA by failing to conduct a source test on Furnace #1 during calendar
27 year 2001.

28 93. The Facility violated Condition 12 of the Permit Unit Requirements for Furnace

1 #1 in its Title V permit and Section 502 of the Act by failing to conduct a source test on Furnace
2 #1 during calendar year 2001.

3 94. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt
4 Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table),
5 SGCI is liable for civil penalties of up to \$27,500 per day for each violation of any requirement
6 of the CAA occurring between January 30, 1997, and March 15, 2004.

7 **FIFTH CLAIM FOR RELIEF**

8 **(Title V Permit - Invalid Compliance Certification for Furnace #2)**

9 95. Paragraphs 1 through 15, 33 through 53, 58, and 59 are incorporated herein by
10 reference as if fully set forth below.

11 96. On or about May 31, 2001, SGCI submitted to the District and EPA a Title V
12 compliance certification for calendar year 2000 signed by a “responsible official” of the
13 company, Robert J. Ganter, Senior Vice President of Manufacturing (“Compliance
14 Certification”). The Compliance Certification states that “all information provided in this
15 certification package is true, accurate, and complete.”

16 97. In the Compliance Certification, SGCI stated that the Facility’s compliance status
17 with respect to Conditions #1, 2, 4, and 12 of the Permit Unit Requirements for Furnace #2 was
18 “continuous” during the compliance period based on source test reports.

19 98. On June 5, 2002, the Facility stated that there were no source tests conducted on
20 Furnace #2 in the year 2000.

21 99. The Facility violated Condition 35 of the Facilitywide Requirements of its Title V
22 permit and Section 502 of the Act by submitting an invalid compliance certification on or about
23 May 31, 2001, with respect to Conditions 1, 2, 4, and 12 of the Permit Unit Requirements for
24 Furnace #2.

25 100. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt
26 Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table),
27 SGCI is liable for civil penalties of up to \$27,500 per day for each violation of any requirement
28 of the CAA occurring between January 30, 1997, and March 15, 2004.

SIXTH CLAIM FOR RELIEF

(Title V Permit - Invalid Compliance Certification for Furnace #1)

101. Paragraphs 1 through 15, 33 through 53, 58, and 59 are incorporated herein by reference as if fully set forth below.

102. On or about August 17, 2001, SGCI submitted to the District a Title V compliance certification for January 1, 2001 through July 14, 2001 signed by a "responsible official" of the company, Anthony J. Cappellino, Senior Vice President of Technology Support ("January - July 2001 Compliance Certification"). The January - July 2001 Compliance Certification states that "all information provided in this certification package is true, accurate, and complete." The January - July 2001 Compliance Certification stated that the Facility's compliance status with respect to Conditions #1, 4, and 12 of the Permit Unit Requirements for Furnace #1 was "continuous" during the compliance period based on source test reports.

103. On or about August 26, 2002, SGCI submitted to the District a Title V compliance certification for July 15, 2001 through July 14, 2002 signed by a "responsible official" of the company, David E. Macy, Plant Manager ("First July 2001-July 2002 Compliance Certification"). The First July 2001 - July 2002 Compliance Certification states that "all information provided in this certification package is true, accurate, and complete." The First July 2001 - July 2002 Compliance Certification failed to contain any compliance information with respect to Conditions #1, 4, or 12 of the Permit Unit Requirements for Furnace #1.

104. On or about October 18, 2002, SGCI re-submitted to the District a Title V compliance certification for the period from July 15, 2001 through July 14, 2002 signed by a "responsible official" of the company, David E. Macy, Plant Manager ("Second July 2001 - July 2002 Compliance Certification"). The Second July 2001 - July 2002 Compliance Certification states that "all information provided in this certification package is true, accurate, and complete." The Second July 2001 - July 2002 Compliance Certification stated that the Facility's compliance status with respect to Conditions #1 and 4 of the Permit Unit Requirements for Furnace #1 was "continuous" during the compliance period based on source test reports. Regarding Condition #12, SGCI stated that the Facility's compliance status had been "continuous" during the

1 compliance period based on a "source test conducted as required."

2 105. On or about November 22, 2002, SGCI submitted to the District a Title V Permit
3 Renewal Application ("Permit Renewal") signed by a "responsible official" of the company,
4 David E. Macy, Plant Manager. The Permit Renewal included another revision to the Title V
5 compliance certification for the period from July 15, 2001 through July 14, 2002 ("Third July
6 2001 - July 2002 Compliance Certification"). Included in the Third July 2001 - July 2002
7 Compliance Certification was a statement that "all information provided in this certification
8 package is true, accurate, and complete." The Third July 2001 - July 2002 Compliance
9 Certification stated that the Facility's compliance status with respect to Conditions #1 and 4 of
10 the Permit Unit Requirements for Furnace #1 was "continuous" during the compliance period
11 based on a "source test." Regarding Condition #12, SGCI stated that the Facility's compliance
12 status had been "intermittent" during the compliance period, because the "Facility missed the
13 source tested required during 2001. The annual test conducted in March 2002 indicated
14 compliance with all emission requirements." SGCI further explained that "the facility had
15 incorrectly certified compliance with the annual requirements."

16 106. The Facility violated Condition 35 of the Facilitywide Requirements of its Title V
17 permit and Section 502 of the Act by submitting an invalid compliance certification on or about
18 October 18, 2002, with respect to Conditions #1, 4, and 12 of the Permit Unit Requirements for
19 Furnace #1.

20 107. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Debt
21 Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table),
22 SGCI is liable for civil penalties of up to \$27,500 per day for each violation of any requirement
23 of the CAA occurring between January 30, 1997, and March 15, 2004.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, United States of America, respectfully requests that this
26 Court:

27 1. Issue an injunction requiring Defendant SGCI to remedy its past
28 noncompliance with the Clean Air Act and the California SIP, and to comply prospectively with

1 the applicable requirements;

2 2. Assess civil penalties of up to \$27,500 per day for each violation occurring
3 between January 30, 1997, and March 15, 2004, and of up to \$32,500 per day for each violation
4 occurring after March 15, 2004;

5 3. Award Plaintiff its costs and disbursements in this action; and

6 4. Grant such other relief as may be appropriate.

7 Respectfully submitted,

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10 Dated: 4/13/05

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

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14 Dated: 4-19-05

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